

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SUMMARILY AND CONDITIONALLY VACATING A PUBLIC STORM DRAIN EASEMENT LOCATED AT THE NORTHERN TERMINUS OF GREENLEE DRIVE

WHEREAS, subdivision (c) of Section 8333 of the Streets and Highways Code of the State of California authorizes the City Council to summarily vacate the abovementioned easement if it will be superseded by relocation and there are no other public facilities located within the easement; and

WHEREAS, although there are existing public storm drain facilities located within the easement, the City will reserve a sufficient public storm drain easement through the sale and transfer of surplus City property located at the terminus of Greenlee Drive, APN 303-28-067, to Burkette Drive, LLC under the purchase and sale agreement for the transaction, which transaction was authorized by the San José City Council on April 30, 2013 by Resolution No.76614; and

WHEREAS, the City Council intends to summarily and conditionally vacate the abovementioned easement (hereinafter the "Easement") constituting all that real property situated in the City of San José, County of Santa Clara, State of California, more particularly described as:

STORM DRAIN EASEMENT

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, being a portion of the storm sewer easement reserved in Resolution No. 57522 recorded on June 7, 1984 in Book 1610 at Pages 575-579, Official Records of Santa Clara County, also being a portion of Parcel "P" and a portion of Parcel "Q" as shown on the Record of Survey recorded on January 15, 1973 in Book 314 of Maps at Pages 55-56, Records of Santa Clara County, said portion being more particularly described as follows:

Beginning at the northeasterly corner of said Parcel "P", said point also being on the westerly line of San Tomas Expressway as shown on said Record of Survey; thence along the easterly line of said Parcel "P" and the said westerly line of San Tomas Expressway the following courses:

- S 04°53'12" E 17.11 feet to an angle point

- S 01°49'06" E 93.92 feet to a point being distant along said westerly line N 01°49'06" W 53.96 feet from the southeasterly corner of said Parcel "P" thence leaving said easterly line of Parcel "P" and said westerly line of San Tomas Expressway, S 88°10'54" W 24.28 feet; thence N 04°03'04" W 111.13 feet to a point on the northerly line of said Parcel "Q"; thence along said northerly line of Parcel "Q" and the northerly line of Parcel "P", N 88°15'45" E 27.69 feet to the Point of Beginning.

The described property contains approximately 2,928 square feet.

WHEREAS, on May 20th, 2013, the Director of the Department of Public Works approved that certain map entitled "Plat Map Showing The Portion Of Storm Drain Easement To Be Vacated" showing the easement that the City Council intends to summarily and conditionally vacate (hereinafter "Map"); and

WHEREAS, attached to this Resolution as Exhibit "A" is a copy of the report, dated May 28th, 2013, that the Director of the Department of Public Works submitted to the City Council setting forth the reasons justifying the summary and conditional vacation of the Easement (hereinafter "Report").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. The City Council hereby adopts the Report and, based upon the Report and all other evidence submitted, makes the following findings:

1. The Easement has been superseded by relocation; and
2. Although there are existing public storm drain facilities located within the Easement, the City will reserve a sufficient public storm drain easement under the purchase and sale agreement authorized by City under Resolution No. 76614. No public facilities are located within the Easement that would be affected by a summary and conditional vacation; and
3. This summary vacation is conditional upon the execution of a purchase and sale agreement and completion of the sale and transfer of surplus City property located at the terminus of Greenlee Drive, APN 303-28-067, to Burkette Drive, LLC authorized by the San José City Council on April 30, 2013 by Resolution No.76614; and

4. The Easement is not needed for present or prospective easement purposes.

SECTION 2. Based upon the findings made in Section 1 of this Resolution and the provisions of Section 8333 of the Streets and Highways Code, the City Council does hereby order that the Easement shall be and hereby is summarily and conditionally vacated.

SECTION 3. The City Clerk is hereby directed to record at Santa Clara County Records this Resolution, including Exhibit "A" hereto, and the Map.

SECTION 4. This vacation is conditional and will not take effect until the execution of a purchase and sale agreement and completion of the sale and transfer of surplus City property located at the terminus of Greenlee Drive, APN 303-28-067, to Burkette Drive, LLC authorized by the San José City Council on April 30, 2013 by Resolution No.76614.

ADOPTED this ____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
Acting City Clerk



COUNCIL AGENDA: 06-18-13
ITEM:

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: SEE BELOW

DATE: May 28, 2013

Approved

Date

COUNCIL DISTRICT: 1

**SUBJECT: SUMMARY VACATION OF A PORTION OF A PUBLIC STORM DRAIN
EASEMENT LOCATED AT NORTHERN TERMINUS OF GREENLEE
DRIVE**

RECOMMENDATION

Adopt a resolution summarily and conditionally vacating a portion of a Public Storm Drain Easement located at the northerly terminus of Greenlee Drive, APN: 303-28-067.

OUTCOME

Approval of this recommendation would remove this encumbrance and allow for completion of the sales process and transfer of approximately 7,260 square foot (0.167 acres) of City-owned property on Greenlee Drive, APN: 303-28-067 to Burkette Drive, LLC.

BACKGROUND

In 1972, the City obtained fee ownership of the subject property for the potential extension of Greenlee Drive. The original design of Greenlee Drive was for a "U" shaped street that would extend from Boynton Avenue up to San Tomas Expressway and back to Boynton Avenue. In 1978, street improvements were constructed that resulted in Greenlee Drive terminating at a cul-de-sac. In 1984, the City vacated the public right of way area over a portion of the subject property and reserved an easement for public storm drain facilities. Ownership of the subject property has remained with the City since that time. The property is currently vacant land and is bounded by high density residential development to the north and west, San Tomas Expressway to the east, and Greenlee Drive to the south (see attached location map).

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During recent discussions regarding a potential sale of the property, it was identified that the existing Public Storm Drain Easement could be reduced in order to facilitate the sale and development of the property.

ANALYSIS

Staff has determined that the Public Storm Drain Easement reserved in 1984 is larger than necessary to maintain the existing storm drain facilities. As such, it is customary to vacate only the portion that is unnecessary for public purposes. As a result of the actions that will occur to effect the vacation, the portion of the easement that is still required for storm drain purposes will be reconveyed to and retained by the City. Through coordination with the Office of Economic Development and the City Attorney's Office, it was concluded that entire portion of the existing Public Storm Drain Easement on APN 303-28-067 should be vacated and that through the sales and purchase agreement a smaller Public Storm Drain Easement would be reserved. The result is that the City will retain the easement that it requires for storm drain purposes and the legal description of the easement will be clearer and more readily useable.

On April 30, 2013, the City Council adopted a resolution that authorized the City Manager to execute an agreement and other necessary documents for the sale and transfer of surplus City property located at the terminus of Greenlee Drive, APN 303-28-067 to Burkette Drive, LLC. As part of the agreement, the City will reserve a Public Storm Drain Easement that is sufficient to maintain the existing storm drain facilities.

Per Section 8333(c) of the Streets and Highways Code, this Public Storm Drain Easement can be summarily vacated because the easement has been superseded by relocation and although there are existing public storm drain facilities located within the easement, the City will reserve a separate Public Storm Drain Easement through the sales agreement process. The net effect of the vacation will be such that the existing public storm drain facilities will remain in their current location with only reduced easement reserved for the public storm drain purposes.

Additionally, if Council approves the proposed vacation, the resolution will be conditional upon final execution of the sales agreement which will result in the reservation of the separate Public Storm Drain Easement effectively reconveying the desired portion of the current easement back to the City.

EVALUATION AND FOLLOW-UP

If Council adopts this resolution summarily vacating the subject portion of the Public Storm Drain Easement on the condition that a portion of the easement is reconveyed to the City, no further action by the City will be required.

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PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the criteria above. This memorandum will be posted to the City's website for the June 18, 2013 Council Agenda.

COORDINATION

The vacation has been coordinated with the Department of Planning, Building and Code Enforcement, Office of Economic Development and the City Manager's Budget Office. In addition, the vacation and required resolution have been reviewed by the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

Vacating a portion of the storm drain easement is in alignment with the Council-approved Budget Strategy Expenditure Control section by eliminating a City maintenance obligation and liability.

COST SUMMARY/ IMPLICATIONS

The Office of Economic Development has provided the necessary funding to provide for Public Works to process the subject vacation.

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CEQA

Exempt, PP13-006.

/s/

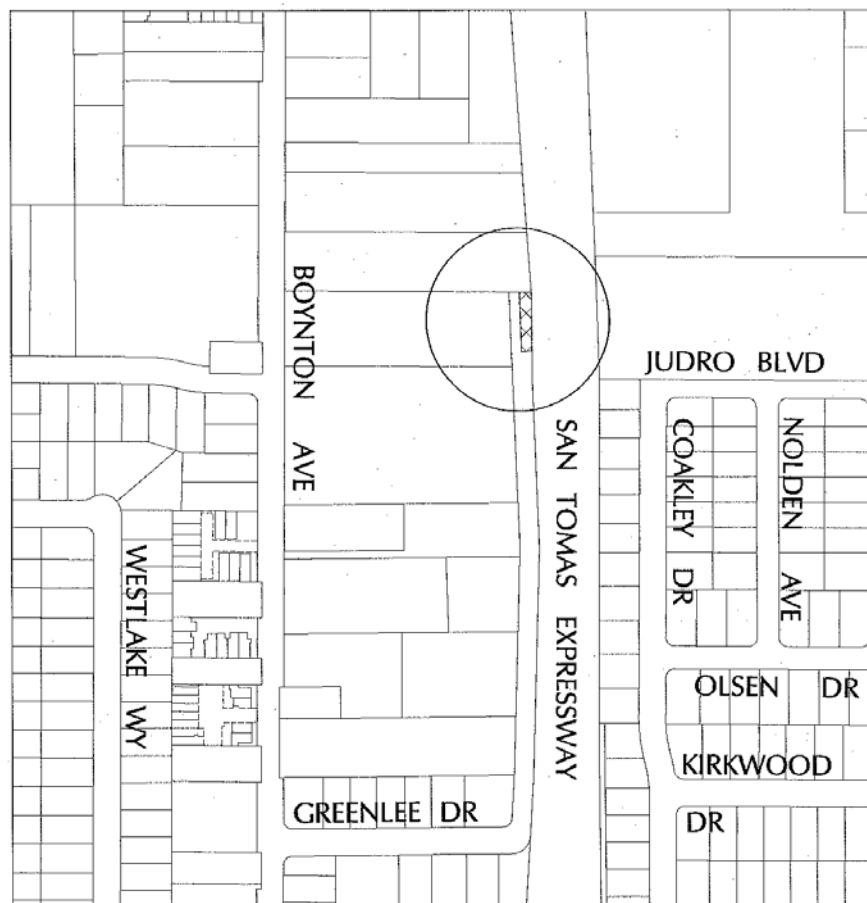
DAVID SYKES
Director of Public Works

For questions please contact Harry Freitas, Assistant Director, at 408-535-8300

PD:NM:jk
Attachment

LOCATION MAP

SHOWING THE PORTION OF PUBLIC STORM DRAIN EASEMENT TO BE VACATED



AREA TO BE VACATED

